IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.214 OF 2004

Court Receiver
High Court, Mumbai .. Petitioner

Vs.

Vatsa Interiors P.Ltd.
Previously known as
Benzer Interiors P.Ltd. .. Respondent

Shri H.J.Thakkar i/b Soloman & Co. for the petitioner

Shri V.R.Dhond with Ms.Deepa Mani i/b S.K.Shrivastava & Co. for the company

Shri R.L.Tola i/b L.C.Tola & Co. for the intervenor

CORAM : S.U.KAMDAR, J

DATED : 11TH MARCH, 2005

ORAL JUDGMENT:

1. The present petition is filed by the Court Receiver, High Court, Mumbai for the recovery of Royalty Charges against the respondent company for the use occupation and possession of the premises known as Lawn Side situated at Jamnadas Mehta Road, Malabar Hill, Mumbai - 6. By an order of this court the respondent company was appointed as an agent of the Court Receiver in the suit no.258 of

1996 on a condition that the respondent company should pay the royalty amount at the rate of Rs.3,00,000/- per month. On 3.9.96 the respondent company changed its name from original Benzer Interiors P.Ltd to the present name Vatsa Interiors P.Ltd.

2. It is the case of the Receiver that the Respondent Company was in arrears of the payment of royalty charges for a long period of time right from 1997 and the total arrears was Rs.97,54,768/- On 16.04.2002 the Court Receiver High Court Mumbai issued notice under section 433 and 434 of the Companies Act, 1956 to the Respondent Company for the payment of the said arrears amount of Rs.97,54,768/-. In the said Statutory Notice the Receiver has not made any claim for interest on the said arrears amount and the actual claim is only made of principal amount of royalty charges. On non payment of the said amount inspite of statutory notice the Court Receiver has filed the present petition. Exhibit A to the present petition sets out particulars of claim. Even in the present particulars of claim the receiver has claimed only

the principal amount of Rs.97,54,768/- and has made no claim towards the interest amount.

3. It is an admitted position that after the filing of the present company petition the respondent company has made payment of the entire amount of Rs.97,54,768/- on 25.3.04. However, while making the payment respondent company has added the following words in the said letter dt.25.03.04 "without prejudice to our clients rights and contentions and subject to account towards the payment of arrears of royalty and other charges" By the said letter the pay order dt.. has been sent for the entire amount of Rs.97,54,768/-. The said pay order has been encashed by the Court Receiver. Thus, the Court Receiver has already received the entire amount as claimed in the petition.

4. In view of the aforesaid position the respondents have contended that the present petition does not survive any more as the claim raised in the petition has been duly satisfied. However, the learned counsel Mr.Thakkar appearing

for the respondent has contended that the amount which has been paid up by the respondent company is infact the principal amount and the respondent company is still liable to pay interest. It has been further contended that the court should direct the respondent company to pay interest failing which the company should be wound up. It has been contended by the learned counsel for the petitioner that irrespective of the fact that the interest amount is claimed or not in the statutory notice and / or in the present company petition the court must direct the respondent company to make payment of the interest amount and / or on failure to do so the court must exercise power of winding up u/s.433 and 434 of the Companies Act, 1956. The learned counsel for the petitioner has in support of the aforesaid contention relied upon the two Judgments. One of the Delhi High Court reported in the case of Devendra Kumar Jain Vs. Polar Forgings and Tools Ltd. reported in 1995 Vol.84 Company Cases Page 766 and another of the Punjab and Haryana High Court in the case of Stephen Chemical Ltd V. Innosearch Ltd reported in 1986 Vol.60 Company Cases Page 702. By relying upon the aforesaid two

judgments the learned counsel for the petitioner has contended that irrespective of the fact that the petitioner has paid the principal amount or not still for the interest amount the court can wind up the company and therefore this court also should exercise the said jurisdiction in the present case.

5. In my view both the aforesaid judgments have no application on the facts of the present case. In the Judgment of the Delhi High Court delivered by Y.K.Sabharwal, J(as he then was) has held that if after filing of the winding up petition amount is paid and interest amount is disputed by disputing the rate of interest then it is open for the company court to determine the rate of interest and direct the respondent company to make the payment and on failure to do so the company can be wound up. In the case of Delhi High Court interest amount was claimed both in the statutory notice as well as in the company petition which was filed for winding up of the respondent company. In the second para of the said Judgment at page 768 in terms it is set out that the principal amount was Rs.4,05,000/- and the aggregate claim inclusive of

interest amount was Rs.5,25,707.60 in the petition. In the aforesaid circumstances, the court has given a specific finding that the petitioner has demanded payment of Rs.1,15,249.60 as interest @ 18% pa. but the company has not even sent a reply to the letters of the petitioner and has failed to make payment of the amount of interest as demanded and accordingly petition for winding up of the company was filed.

6. In the case before the Delhi High Court infact the interest claimed was part and parcel of the claim raised in the company petition and therefore the court was justified in holding that even in respect of the interest amount unless there is a bonafide defence the court is empowered to pass the order of winding up of such a company. The judgment of the Division Bench of the Punjab and Haryana High Court is also on the similar line. In that Judgment the claim of the principal amount was Rs.48,308/- and with interest and cost, the claim was Rs.50,842.05. In the aforesaid circumstances the court held that dispute as to the rate of interest was not a bonafide dispute. Thus, the

court was empowered to pass an order of winding up.

7. In the case before me admittedly no claim of interest is raised either in winding up notice or in company petition . Once the claim is not raised by the petitioner either in the winding up notice or company petition and the petition is restricted only to principal amount and the said amount having been entirely paid up by the respondent company I do not see any reason to exercise my power u.s.433 and 434 of the companies Act, 1956 for winding up of the respondent company. Infact the petitioner has claimed no other amount in the petition save and except the principal amount. The contention of the learned counsel for the petitioner that even in absence of any claim for interest in the petition I must adjudicate the said claim of interest amount is not possible to accept. I find the said contention totally without any substance and merits. It is however clarified that the Court Receiver if so advised will be entitled to initiate appropriate proceedings for claim of interest, if any, and it such proceeding is initiated then the company will be entitled to defend the same on

merits on all grounds available to them in law.

8. However, the learned counsel for the petitioner has objected to the following words which are set out in a letter while tendering the aforesaid payment "without prejudice to the rights and contentions of the respondent company and subject to the account towards payment of arrears of royalty and other charges". It has been contended that the aforeasid twords indicate that there is no valid payment in the eyes of law at all since the payment tender is conditional one.

9. The learned counsel for the respondent company however, makes a statement after taking instruction from the client that the said wordings contained in the said letter addressed to the Court Receiver. He further states that however, this payment should be without prejudice to the rights and contention of his client against the parties in the suit which is pending. In view of the aforesaid statement made by the learned counsel for the respondent company I find that even the said grievance of the petitioner does not survive.

10. This leads me to the last issue of imposing cost on the respondent company. Firstly, it is an admitted position that the payment of royalty charges has not been made for a long period of time inspite of various notices and letters issued by the petitioner who is the Court Receiver, of this court Court. Secondly, the respondent company has enjoyed the premises without making any payment of royalty charges. Respondent company by this conduct and action has drawn the court receiver to court to initiate the present proceedings and incurred the cost and expenses unnecessarily.

11. In the aforesaid circumstances I called upon the learned counsel for the respondent company to answer why cost in the form of exemplary nature ought not to be imposed against the company. The learned counsel for the respondent company has fairly left the said issue of cost to the court and has agreed to abide by it. Looking at the aforesaid conduct on the part of the respondent company I am of the opinion that there should be an order of cost against the respondent company which

quantified at Rs.50,000/-